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ABSTRACT

Each year the American Association of University Professors (AAUP) receives many inquiries about the legal status of faculty handbooks. To respond to some common inquiries, the Association's legal office prepared this overview of faculty handbook decisions. It is arranged by state and includes decisions of which the AAUP is aware and those that it considers most helpful. The guide provides background to help professors, administrators, and their lawyers analyze whether the provisions of a faculty handbook are enforceable as a contract. Forty-one states have held that contractual terms can at time be implied from communications such as oral assurances, preemployment statements, or handbooks. References to law review articles and other general sources appear at the end of the guide, but the guide is not intended as legal advice. (SLD)

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Faculty Handbooks As Enforceable Contracts

A State Guide

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A State Guide

2002 Edition

American Association of University Professors
Washington, D.C.

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Contents

Introduction vii
Background ix
Terminology xi

Case Summaries and Citations

Alabama 1
Alaska 1
Arizona 2
California 2
Colorado 2
Connecticut 3
Delaware 4
District of Columbia 4
Florida 5
Georgia 5
Hawaii 6
Idaho 7
Illinois 7
Indiana 8
Iowa 9
Kansas 10
Kentucky 11
Louisiana 11
Maine 12
Maryland 13
Massachusetts 14
Michigan 15
Minnesota 15
Mississippi 16
Missouri 16
Montana 17
Nebraska 17
Nevada 17
New Hampshire 18
New Jersey 18
New Mexico 18
New York 19
North Carolina 21
North Dakota 21
Ohio 22
Oklahoma 22
Oregon 23
Pennsylvania 24
Rhode Island 25
Tennessee 25
Texas 26
Utah 26

Vermont 27
Virginia 28
Washington 28
West Virginia 29
Wisconsin 29

References
Law Reviews 31
Other 32

Introduction

Each year, the American Association of University Professors (AAUP) receives many inquiries about the legal status of faculty handbooks. To respond to some common inquiries, the Association's legal office prepared this overview of faculty handbook decisions.[1] It is arranged by state and includes decisions of which the Association is aware and considers most helpful. The guide provides background to help professors, administrators, and their lawyers analyze whether the provisions of a faculty handbook are enforceable as a contract. References to law review articles and other general sources appear at the end of the guide. This compilation is not exhaustive. It excludes scores of cases addressing the enforcement of employee or personnel manuals and handbooks outside higher education, while it includes a few cases that involve personnel manuals and handbooks applicable to college and university staff because these cases touch on issues relevant to the status of faculty handbooks. We are not aware of published faculty handbook cases in the following states: Arkansas, South Carolina, South Dakota, and Wyoming. Interested parties from these states may want to consult employee handbook and personnel manual cases. This guide is not intended as legal advice. Rather, the AAUP seeks to provide information in this developing area of the law. The Association urges you to consult counsel in your state experienced in higher education or employment law.

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1. The AAUP intends to update this guide on an annual basis, and we would appreciate comments and suggestions about ways to make the publication as user-friendly as possible. We also ask that you forward to us additional relevant cases and their citations for inclusion in next year's edition. Please contact Office of Staff Counsel, AAUP, 1012 Fourteenth St., NW, Suite 500, Washington, DC 20005-3465. E-mail: cvenegoni@aaup.org.

Background

Most employees, including university support staff who are not unionized, are "employees-at-will." In most states, the at-will employment rule is that either party—the employer or the employee—may terminate the employment relationship for virtually any reason, or for no reason at all.

A faculty member, however, almost always has a contract or letter of appointment. Courts are often asked to decide whether a faculty handbook—which includes policies, rules, and procedures under which professors work—also establishes a contractual relationship between a professor and an institution. The issue usually arises in the context of a breach-of-contract claim, and the question is whether the faculty handbook is part of the employment contract between the professor and the institution. Forty-one states have held that contractual terms can at times be implied from communications such as oral assurances, pre-employment statements, or handbooks (Chagares 1989). Of these, handbooks are the most common source of implied contractual terms (Chagares 1989).

Faculty handbook cases raise many issues, including:

- Must a faculty handbook be expressly incorporated by reference into a professor's letter of appointment for the handbook terms to be enforceable?
- May a faculty handbook become part of a professor's employment contract based on the university's established practices even when no express reference to the handbook exists in that contract?
- Is a faculty handbook a unilateral policy statement subject to change at the discretion of the institution?
- Must a faculty handbook meet the legal contract requirements of offer, acceptance, and consideration before the handbook is enforceable as an employment contract? (Consideration is a legal term referring to something of value given in exchange for a promise.)
- What is the legal effect of a disclaimer in a faculty handbook in which a college or university disavows any intent to be contractually bound by the contents?

- Do faculty members at public institutions have a constitutionally protected due process and property interest in continued employment based on a handbook's provisions? (Property interest has been defined by the U.S. Supreme Court as follows: "a person's interest in a benefit is a 'property' interest for due process purposes if there ... are rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing." *Perry v. Sindermann*, 408 U.S. 593, 601 (1972).)
- When a university or college updates its faculty handbook or merges with another institution, does the new or old handbook control a professor's claim?

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Terminology

Nonlawyers may wish to know that the term *aff'd mem.* means that an appeals court affirmed a trial court's decision without writing an opinion. The term *reh'g denied* indicates that a court has declined to rehear a case, and the term *cert. denied* means that a state's highest court or the United States Supreme Court declined to review an appellate court's decision. The term *en banc* means that all of the judges of a court, e.g., all of the judges of the Fifth District Court of Appeals, not just a panel of judges, heard a case, a practice sometimes followed in important cases in which an earlier decision merits reconsideration. The term *per curiam* indicates that the opinion is delivered "by the court" rather than by an individual justice. *Per curiam* decisions are often, though not always, shorter decisions that deal with issues the court views as noncontroversial. The term "Not recommended for publication" refers to cases the court did not intend for publication. The court limits the use of these cases as precedents for future cases, so please check your local court rules before relying on these cases. Readers should check, or "Shepardize," cases listed in this guide for their current status before relying on them. The AAUP only updates this list of cases annually.

Case Summaries and Citations

ALABAMA

Boyett v. Troy State University at Montgomery, 971 F. Supp. 1403 (M.D. Ala. 1997), *aff'd*, 142 F.3d 1284 (11th Cir. 1998). A list of reasons for nonreappointment of nontenured professors provided in a faculty handbook, explicitly identified as a partial list and clearly distinguishing tenured and nontenured professors, cannot serve as the basis for a "legitimate expectation that reappointment could be denied only for cause."

Anderson-Free v. Steptoe, 970 F. Supp. 945 (M.D. Ala. 1997). For an employee handbook to be incorporated as part of a contract, it must satisfy three conditions: (1) "the language . . . must be specific enough to constitute an offer"; (2) "the handbook must have been issued to the employee"; and (3) "the employee must have accepted the offer by retaining employment after having been issued the handbook."

Shuford v. Alabama State Board of Education, 978 F. Supp. 1008 (M.D. Ala. 1997). To determine whether the language of a handbook is sufficient to create property interest in continued employment, courts look to "substantive restrictions on the employer's discretion to discharge, rather than on the procedural protections provided." The sixty-day notice requirement, which limited the timing of employment termination rather than decision to terminate, was a procedural rather than a substantive restriction and, therefore, did not constitute property interest in continued employment.

ALASKA

Zuelsdorf v. University of Alaska, Fairbanks, 794 P.2d 932 (Alaska 1990). A policy manual was expressly incorporated in an employment contract between a university and two nontenured professors through explicit reference in letters of appointment. Once the deadline established in the faculty manual for sending a notice of nonretention for the school year had passed, the professors had a vested right in employment for that year, and that right could not be changed unilaterally by the university's subsequent amendment of the manual to provide for the later deadline.

ARIZONA

Smith v. University of Arizona, 672 P.2d 187 (Ariz. Ct. App. 1983). An assistant professor sought and was denied tenure review process at the end of six years of service as specified by the faculty handbook. The court determined that the university was required to grant a tenure review process in compliance with the faculty manual.

CALIFORNIA

Pomona College v. Superior Court, 53 Cal. Rptr.2d 662 (Cal. Ct. App. 1996). Under California law, in cases not involving discrimination, administrative (not judicial) review was the exclusive remedy available to a nontenured professor who alleged procedural defects in a college's tenure review and grievance procedure, and who alleged that process was governed by the college handbook.

COLORADO

Thornton v. Kaplan, 937 F. Supp. 1441 (D. Colo. 1996). Metropolitan State College of Denver, which denied tenure to a professor, did not violate the professor's property interest in having his tenure application reviewed fairly and in compliance with the school's written policies and procedures because no property interest is created by general criteria for awarding tenure and procedures for tenure review. Rather, property interest would be attained only when a university's "discretion is clearly limited so that the employee cannot be denied employment unless specific conditions are met."

Laubuch v. Bradley, 572 P.2d 824 (Colo. 1977). The language of the faculty handbook at Colorado School of Mines reinforced the college's contention that the school had no tenure system in place. In addition, simple reliance on length of service cannot support an interest in continued employment. "[L]ongevity of employment per se, without additional supportive facts ... [does not create] a protectable interest to the individual."

University of Colorado v. Silverman, 555 P.2d 1155 (Colo. 1976). A dean conditioned retaining an untenured professor on two factors: the renewal of a grant under which the professor was hired and a favorable recommendation by the professor's department. Both conditions were met, but the professor was not retained. The court found that it was the professor's responsibility to be aware of

a faculty handbook provision that stated that the board of regents made all faculty appointments. The power to make appointments could not be delegated to the dean, so the professor was not justified in relying on the dean's statements.

CONNECTICUT

Craine v. Trinity College, 791 A.2d 518 (Conn. 2002). The court upheld the verdict for a professor on her breach-of-contract claim for denial of tenure. The court noted that "a faculty manual that sets forth terms of employment may be considered a binding employment contract." The defendant's standards and requirements for tenure review were set forth in the faculty handbook, and required that the college "indicate as clearly as possible those areas to which a candidate needs to address special attention" when conducting her second reappointment review. The court found that the college's failure to indicate adequately trouble areas during this second review, before the denial of tenure, constituted breach of the contract as set forth in the faculty handbook.

Franco v. Yale University, 161 F.Supp.2d 133 (D.Conn. 2001). A surgeon brought a case against Yale University for salary reductions, failure to reappoint him, and his exclusion from private physician's groups within the department. The defendants argued, in part, that the claims should be barred by the surgeon's failure to follow the internal review provisions specified in the faculty handbook. The plaintiff, however, explicitly eschewed any claim that he had a contract based upon the handbook. The court concluded that if the doctor should, at trial, seek damages based upon the failure to reappoint him or reductions in salary while he was employed, the failure to exhaust the internal remedies in the handbook would bar such claims. However, the court also concluded that other aspects of the complaint, having to do with issues not covered by the internal review process, were not barred by a failure to follow the handbook procedures.

Esposito v. Connecticut College, No. X04CV 970117504S, 2000 Conn. Super. LEXIS 2305 (Sept. 1, 2000). The director of planned giving at Connecticut College claimed that he was wrongly demoted. Although his contract said he was subject to the terms of the employee handbook, the handbook itself stated that employment was at will and the handbook was "informational rather than contractual." The court held that the handbook was not part of a staff person's employment contract.

DELAWARE

Henry v. Delaware Law School of Widener University, Inc., No. A-8837, 1998 WL 15897 (Del. Ch. Jan. 12, 1998). A university did not breach a professor's employment contract, which incorporated by reference the university's faculty manual, when it denied the professor tenure, despite the professor's claim that the review process was "sufficiently tainted," because the procedures used in the initial tenure decision and internal review process were substantially followed.

DISTRICT OF COLUMBIA

Kakaes v. George Washington University, 790 A.2d 581 (D.C. 2002). The faculty handbook constituted the contract between the parties. The court found failure to give timely notice of denial of tenure to be a breach of that contract, but refused to grant tenure as a remedy. Instead, the court upheld the lower court's grant of $75,000 in damages and costs.

Paul v. Howard, 754 A.2d 297 (D.C. 2000). A faculty handbook published in 1980 and still in effect at the time of application for tenure was a binding contract of employment for a tenure decision. A second tenure application submitted after the publication of a new faculty handbook in 1993 was governed by the new faculty handbook, as a new contract of employment. The university's denial of tenure both times was appropriate under both handbooks, and the professor was not entitled to de facto tenure under either handbook despite seven years of service in a tenure-track position and one additional year in a non-tenure-track lecturer position.

Breiner-Sanders v. Georgetown University, 118 F. Supp.2d 1 (D.D.C. 1999). The court held that a faculty handbook "defines the rights and obligations of the employee and employer, and is a contract enforceable by the courts," quoting *McConnell v. Howard University* (below). A professor, who alleged that the handbook's provisions on allocation of office space and fair treatment of faculty had not been properly followed, was not entitled to summary judgment because there were unresolved factual questions.

McConnell v. Howard University, 818 F.2d 58 (D.C. Cir. 1987). District of Columbia law provides that an employee handbook is a contract enforceable by the courts and, therefore, a private university's power to terminate the

appointment of a tenured faculty member is subject to faculty handbook procedures and provisions.

Morgan v. American University, 534 A.2d 323 (D.C. 1987). A provision of the faculty handbook, which provided for the dismissal of a professor upon showing of adequate cause, did not abrogate the university's right to rescind contract for material misrepresentation when a faculty member failed to disclose that he simultaneously held a full-time position at another university.

Howard University v. Best, 484 A.2d 958 (D.C. 1984). A university breached its contract with a faculty member by failing to give notice of nonrenewal as required by the faculty handbook.

Greene v. Howard University, 412 F.2d 1128 (D.C. Cir. 1969). The university was in breach of contract by not providing nontenured faculty members adequate notice as defined by its faculty handbook. Prior conduct had created protectable interests in faculty retention and review. "Contracts are written, and to be read, by reference to the norms of conduct and expectations founded upon them. This is especially true of contracts in and among a community of scholars, which is what a university is. The readings of the marketplace are not invariably apt in this non-commercial context."

FLORIDA

Williams v. Florida Memorial College, 453 So.2d 541 (Fla. Dist. Ct. App. 1984). Because only notice of intention to reappoint was specified by the faculty handbook, a nontenured professor who was not given one year's notice for nonappointment did not have a breach-of-contract claim.

GEORGIA

Shah v. Clark Atlanta University, 1999 WL 1042979 (N.D. Ga. 1999). The court held that a professor's "reliance on the Faculty Handbook to support a breach-of-contract claim is ... misplaced" because "an employer's failure to follow termination procedures in a personnel manual is not actionable under Georgia law." In doing so, the court also noted that the faculty handbook contained a specific provision stating that it shall not be construed as a legally binding contract, and that the professor's employment contract "did not explicitly incorporate the Faculty Handbook."

Gray v. Board of Regents of University System of Georgia, 150 F.3d 1347 (11th Cir. 1998), *cert. denied*, 526 U.S. 1065 (1999). The court rejected a professor's contention that "mere presence" as a faculty member beyond a seven-year probationary period was sufficient for the award of tenure and its protections. A professor's property interest in employment was not secured by successive, separate one-year contracts. The claim that a handbook provides for automatic award of tenure with offer of eighth-year contract was rejected. Neither plain reading of handbook provisions nor preexisting practice could support a claim for tenure and property interest in continued employment.

Savannah College of Art v. Nulph, 460 S.E.2d 792 (Ga. 1995). A college and a professor, who was terminated midyear during one-year employment contract, agreed that the faculty handbook, which provided grounds and procedures for termination, was incorporated into the professor's employment contract. However, the college did not breach that contract in failing to follow proper procedures for dismissing the professor: "If the employer were justified in terminating the employee under the contract, then the termination would have occurred even if the employer had followed the proper procedures. Thus, procedural flaws in the manner in which the termination was carried out will not warrant damages to compensate for losses that naturally result from a justified termination."

Moffie v. Oglethorpe University, Inc., 367 S.E.2d 112 (Ga. Ct. App. 1988). A faculty handbook that was incorporated by reference in a faculty member's half-page employment contract, and of which the tenure-track faculty member was aware, formed part of an employment contract; however, the university did not breach that contract by failing to provide supportive data for tenure denial because no damages arise from such failure: "all that is lost by such a failure is [the] satisfaction of [the professor's] curiosity."

HAWAII

University of Hawaii v. University of Hawaii Professional Assembly, 659 P.2d 732 (Haw. 1983). A tenure-track professor charged that a university improperly denied him tenure. The university had relied on the tenure provisions of the faculty handbook, which stated that a Ph.D. was required, instead of the professor's department's tenure criteria, which did not require a Ph.D. The court

found that the faculty handbook criteria governed because they had been established by the board of regents.

Abramson v. Board of Regents, 548 P.2d 253 (Haw. 1976). A public university handbook lacked the force of law because there was no showing of compliance with state rule-making procedures. But the published tenure policy of an educational institution may be incorporated by reference into an employment contract of a probationary faculty member. In the absence of a written or unwritten policy creating the expectation of employment, an instructor had no property interest in continued employment.

IDAHO

Olson v. Idaho State University, 868 P.2d 505 (Idaho Ct. App. 1994). Because the conferral of tenure, as provided by the faculty handbook, required a "positive action of approval" from the board and president of the institution, the plaintiff professor could not avail himself of the protections associated with tenure.

Hughes v. Idaho State University, 835 P.2d 670 (Idaho Ct. App. 1992). A nontenured professor's property interest in continued employment was not violated because the professor was hired under a series of one-year contracts. Various handbook provisions supported that conclusion.

Loebeck v. Idaho State Board of Education, 530 P.2d 1149 (Idaho 1975). A grant of tenure at Idaho State University required an affirmative act by the institution, as specified by the faculty handbook and contract.

ILLINOIS

Hentosh v. Herman M. Finch University of Health Sciences, 734 N.E.2d 125 (Ill. App. Ct. 2000), *appeal denied*, 742 N.E.2d 327 (Ill. 2000). Professors submitted their tenure applications for review, but the tenure review was never completed because the department decided to terminate their appointments. Both sides agreed that the faculty handbook was part of their contracts. The court found that the faculty handbook modified the at-will relationship. Therefore, the untenured professors were entitled to tenure review. Furthermore, based on the university bylaws and faculty handbook, once the tenure-review process was begun, the professors had the right to have it completed.

Kirschenbaum v. Northwestern University, 728 N.E.2d 752 (Ill. App. Ct. 2000). A medical faculty handbook, along with a letter of appointment, clearly identified Northwestern University's "zero-based" salary obligation to a faculty member. Because the terms of the contact were "unambiguous," Northwestern did not breach an express or implied contract with the faculty member.

Gray v. Mundelein College, 695 N.E.2d 1379 (Ill. App. Ct. 1998). Under Mundelein College's faculty manual, tenured professors could be terminated for a limited number of reasons, including financial exigency. Facing financial problems, Mundelein "affiliated" with Loyola University, an eventuality not addressed by the handbook. The court determined that the precise terms of the handbook were operative and because no financial crisis had been announced as stipulated in the guidelines, the tenured professors' rights were not extinguished by affiliation. *See also Gray v. Loyola University of Chicago*, 652 N.E.2d 1306 (Ill. App. 1995).

Jacobs v. Mundelein College, Inc., 628 N.E.2d 201 (Ill. App. Ct. 1993). A private college's decision not to renew a faculty member's contract failed to breach the faculty handbook because the handbook's controlling provision did not require the administration to defer to or even accept the recommendations of department chairpersons or faculty members on the issue of contract renewal. For a handbook to become part of an employment contract, it must (1) "contain a promise clear enough that an employee would reasonably believe an offer has been made"; (2) "be disseminated to employee in such a manner that he is aware of its contents and reasonably believes it to be an offer"; and (3) "be accepted by the employee, meaning employee must commence or continue to work after learning of policy statement."

Arneson v. Board of Trustees, McKendree College, 569 N.E.2d 252 (Ill. App. Ct. 1991). A college could not reject a manual as part of an employment contract because, although it was never adopted by the college, professors were made to rely on the manual as part of the "rules and regulations" defining the relationship between the faculty and college.

INDIANA

McEnroy v. St. Meinrad School of Theology, et al., No. 74A01-9803-CV-12 (Ind. Ct. App. 1999), *appeal denied*, 713 N.E.2d 334 (Ind. 2000). A tenured professor,

whose employment was terminated after signing an open letter to the Pope advocating the ordination of women, brought a breach-of-contract action against a Catholic institution. The court held that ambiguity in the letter of appointment showed the intent of both parties to incorporate additional terms, including the faculty handbook, which allowed for termination for serious deficiency in performance of duties.

Colburn v. Trustees of Indiana University, 739 F. Supp. 1268 (S.D. Ind. 1990), *aff'd*, 973 F.2d 581 (7th Cir. 1992). A faculty handbook provided no definite terms of employment, and department bylaws provided that professors could be dismissed only for cause during the academic year for which they had been appointed. Therefore, professors who had one-year employment contracts could not prevail on their dismissal claims when the university failed to reappoint them, since the professors were not dismissed, merely not reappointed.

IOWA

King v. Hawkeye Community College, No. C98-2004, 2000 U.S. Dist. Lexis 1695 (N.D. Iowa Jan. 3, 2000). The court stated that a handbook may constitute an offer by a college that is accepted by a professor if the professor could reasonably believe that he or she had been guaranteed protections by the college. The court applied the three-part test stated in *Taggart v. Drake University* (below) and looked at the following criteria to evaluate whether it was reasonable for the professor to rely on the handbook: "(1) is the handbook in general and the progressive disciplinary procedures in particular mere guidelines or a statement of policy, or are they directives?; (2) Is the language of the disciplinary procedures detailed and definite or general and vague?; (3) Does the employer have the power to alter the procedures at will or are they invariable?" The court stated that "if the language is vague, creates procedural guidelines, and reserves the right for employers to change procedures, the handbook does not create a unilateral contract." Based on this analysis, the court held the handbook to be part of the professor's contract. Therefore, the college breached the contract when the handbook stated that the professor was entitled to six months of unpaid leave and a three-month review to determine if he was fit to return to work, but the college provided neither.

University of Dubuque v. Faculty Assembly, et al., No. EQCV090784 (Iowa Dist. 1999). The court concluded that the faculty handbook constituted an enforceable employment contract because (1) "letters of appointment and the Handbook expressly incorporate each other by reference"; (2) the handbook clearly states that its "terms shall be legally binding and enforceable"; (3) the terms of the handbook "govern the continuation and termination of the employment contract and supersede letters of appointment in the event of a conflict"; and (4) "surrounding facts and circumstances also indicate that the Handbook terms are part and parcel of the employment contracts."

Taggart v. Drake University, 549 N.W.2d 796 (Iowa 1996). The university did not breach an employment contract with a faculty member who was denied tenure. A faculty handbook may give rise to an enforceable contract under three conditions: "(1) document must be sufficiently definite in its terms to create an *offer*; (2) document must be communicated to and accepted by employee so as to create *acceptance*; and (3) employee must continue working, so as to provide *consideration*." While the procedural rights in the handbook were sufficiently specific to create a contract, the university followed procedures adequately to deny the professor's breach-of-contract claim.

Mumford v. Godfried, 52 F.3d 756 (8th Cir. 1995). A probationary professor did not have a property interest in continued employment at Iowa State University and, therefore, had no constitutional right to due process. While the faculty handbook procedures were incorporated into his employment contract, "a contractual right to have certain procedures followed does *not* create a property interest in procedures themselves."

KANSAS

Lesourd v. Washburn University of Topeka, No. 86-2324-S, 1987 U.S. Dist Lexis 9367 (D. Kan. Sept. 22, 1987). A professor's contract stated that her appointment was subject to the policies of the faculty handbook. Therefore, the department chair's discussion with a nontenured professor concerning her teaching assignment for the next year did not preclude the university from terminating her employment because the faculty handbook stated that all faculty contracts were "subject to final confirmation by approval of the budget after final hearing." The

department chair did not have authority to enter into a binding contract with the professor.

KENTUCKY

Landrum v. Board of Regents, No. 92-6231, 1994 U.S. App. LEXIS 2329 (6th Cir. Feb. 8, 1994) (Not recommended for publication). An untenured professor was employed under a consent decree from previous litigation. The settlement provided that the university was to employ the professor "through the academic year when he reaches the age of sixty-five years, according to the provisions of the University Faculty Handbook." Although the handbook was later updated to ensure employment until age seventy, the court found the consent decree was based on the earlier handbook. Therefore, the university did not violate the professor's rights when it refused to employ him past age sixty-five.

Blank v. Peers, No. 92-5687, 1993 U.S. App. LEXIS 8038 (6th Cir. Apr. 7, 1993), *cert. denied*, 510 U.S. 883 (1993) (Not recommended for publication). A university failed to follow grievance procedures outlined in the faculty handbook in terminating a tenured professor's appointment. Nevertheless, this "technical" violation of handbook requirements did not violate constitutional due process because the hearing actually accorded the professor was meaningful.

LOUISIANA

Stanton v. Tulane University, 777 So. 2d 1242 (La. Ct. App. 2001), *writ denied*, No. 2001-C-0391, 2001 La. LEXIS 1410 (La. April 12, 2001). A nontenured assistant professor claimed his employment was terminated in violation of the university's faculty handbook. The court found that the handbook was not part of the contract, because "Louisiana recognizes a presumption favoring at-will employment" and the handbook explicitly said that it was a "general guide." The court stated that "implicit in the status of nontenured/probationary employee is the assumption that protection against arbitrary or repressive dismissal is absent, i.e., the doctrine of employment at will prevails."

Fairbanks v. Tulane, 731 So.2d 983 (La. Ct. App. 1999). A deceased faculty member's son sued a university for tuition-waiver benefits identified in the faculty handbook as part of a faculty member's compensation. The court concluded that the university was not entitled to summary judgment, because the

facts concerning handbook provisions still needed to be resolved. Commenting on previous court decisions concerning faculty handbooks, the court wrote that "[w]e did not hold that a provision of the faculty handbook could never become an enforceable obligation." Under conditions where provisions of a handbook are designed to induce an employee (e.g., in the form of additional compensation), an employee may "acquire a vested property right."

Schwarz v. Administrators of Tulane Educational Fund, 699 So.2d 895 (La. Ct. App. 1997). The failure of a private university to grant tenure to a professor did not breach any employment contract because the tenure procedure set forth in the faculty handbook did not constitute a mutual agreement necessary for a contractual obligation: "a grievance procedure in a handbook is a unilateral expression of company policy" rather than "a meeting of the minds" for the purposes of contract law.

Schalow v. Loyola University of New Orleans, 646 So.2d 502 (La. Ct. App. 1994). A private university was entitled to terminate the employment of a probationary professor without cause after the expiration of his annual contract. Some faculty handbook provisions were specifically incorporated by reference into the professor's employment contract, and these provisions indicated that nontenured faculty members were probationary employees—in contrast with tenured faculty, who could be terminated for cause only.

Marson v. Northwestern State University, 607 So.2d 1093 (La. Ct. App. 1992). "[P]olicy handbooks do not constitute a part of the contract per se" and, therefore, a faculty handbook did not form part of a nontenured faculty member's contract. Moreover, the university followed the policy guidelines of the handbook.

MAINE

Earnhardt v. University of New England, No. 95-229-P-H, 1996 U.S. Dist. LEXIS 10030 (D. Me. July 3, 1996). A faculty handbook was an enforceable contract because a tenured professor's appointment letter expressly incorporated it.

Knowles v. Unity College, 429 A.2d 220 (Me. Sup. Ct. 1981). An untenured professor could not rely on AAUP guidelines when the faculty handbook and accreditation self-study both clearly stated that the university had no tenure

policy. No tenure terms were included in the professor's letter of appointment, nor did the appointment letter reference the faculty handbook.

MARYLAND

University of Baltimore v. Iz, 716 A.2d 1107 (Md. Ct. Spec. App. 1998). A nontenured faculty member challenged the university's tenure-denial decision. The court ruled that the professor received tenure review provided by the contract. However, "not all personnel policies contained in employee manuals create enforceable contractual rights." For example, the court ruled that general statements of policy would not qualify as enforceable contractual rights.

Marriott v. Cole, 694 A.2d 123 (Md. Spec. Ct. App.), *cert. denied*, 700 A.2d 1215 (Md. 1997). A seventh consecutive one-year contract of a faculty member at Morgan State University did not entitle the professor to tenure under the faculty handbook in effect at the time of her hiring absent express incorporation in the contract of regulations in effect on her date of hire. Instead, the employment contract incorporated revisions of regulations that were made subsequent to her date of hire and under which the professor was permanently ineligible for tenure.

Johns Hopkins University v. Ritter, 689 A.2d 91 (Md. Ct. Spec. App. 1996), *cert. denied*, 694 A.2d 950 (Md. 1997). A university properly terminated two professors' appointments despite statements of the university department director, because the tenure process is entirely governed by the faculty handbook, and the department director had no authority to modify the handbook's tenure procedure. Although the department director could have created the impression that two professors were to start their employment as tenured full professors, "when a tenure process is established in writing and is communicated to a prospective appointee, a subordinate official may not circumvent that process and bind college to a tenure arrangement."

Elliott v. Board of Trustees of Montgomery County Community College, 655 A.2d 46 (Md. Ct. Spec. App. 1995). A disclaimer that changed the employees' relationships with a college to at-will contracts from implied continuing contracts unless good cause existed for termination was not "conspicuous" in a community college's new employee handbook; moreover, a two-page memorandum accompanying the new manual "mute[d] the effectiveness of disclaimer" by

indicating that the revision was designed to "make [the handbook] easier to use" and failed to point out that the new manual contained the disclaimer. Nonetheless, the employer would be free to modify unilaterally a contract previously established with employees as part of an employee handbook as long as the college provides "reasonable," not "actual," notification.

MASSACHUSETTS

Tuttle v. Brandeis University, 2002 WL 202470 (Mass. Super. 2002). "Under appropriate circumstances, promises contained in a personnel handbook, like the Faculty Handbook, can be binding on an employer and effectively become terms of an employment contract." The court held that if an employee reasonably believes his employer was offering to extend the terms of the contract through the manual, the terms of the manual may become incorporated into the employment contract. Consequently, the terms governing tenure may be implied in the faculty member's employment contract and the faculty member has a cause of action for breach of contract if the university fails to follow such procedures.

Berkowitz v. President & Fellows of Harvard College, No. 00-0956, 2001 Mass. Super. LEXIS 4 (Jan. 4, 2001). A tenure-track professor alleged that the university failed to follow grievance and tenure procedures in the faculty handbook. The court found that the professor stated a claim that the university "failed to meet those expectations which it should reasonably expect professors such as [plaintiff] to have under the handbook." Therefore, the court denied the university's motion to dismiss the case.

Motzkin v. Trustees of Boston University, 938 F. Supp. 983 (D. Mass. 1996). A university's alleged failure to follow certain procedures delineated in the faculty handbook, which the parties agreed was incorporated into a professor's employment contract, was immaterial to the professor's breach-of-contract claim "since the outcome of a hearing conducted in a manner that [complainant] would deem 'procedurally proper' would be the same" given that the professor conceded that the university had the right to terminate his employment for cause and he admitted that he was unfit to teach.

Harris v. Board of Trustees of State Colleges, 542 N.E.2d 261 (Mass. 1989). A college properly terminated a tenured faculty member as "unfit" under the

provisions of a college policy handbook that allowed discharge of tenured professors for "just cause."

Goldhor v. Hampshire College, 521 N.E.2d 1381 (Mass. App. Ct. 1988). A college administrator and faculty member was fired by a president because of "extenuating" circumstances. The administrator's handbook provided for specific employment termination procedures except in "extenuating" circumstances. The court concluded that the college's use of "extenuating" circumstances as justification for termination was an affirmative defense and, therefore, the "college must shoulder the burden of proof."

MICHIGAN

Marwil v. Baker, 499 F. Supp. 560 (E.D. Mich. 1980). A professor sued a university, charging that he was guaranteed "a tenure review in his sixth year, or at least an ad hoc renewal committee, and a seventh terminal year" based on rules, policy statements, and customs of the university. The court agreed that "[i]n Michigan an employee can have contractual rights in the procedures and benefits found in statements of policy," but found that the university had properly followed its guidelines and procedures.

Bates v. Sponberg, 547 F.2d 325 (6th Cir. 1976). A university's failure to follow its own handbook in terminating the employment of a tenured professor may raise an administrative state law claim, but was not a violation of constitutional due process rights because the professor was given a meaningful hearing.

MINNESOTA

Cooper v. Gustavus Adolphus College, 957 F. Supp. 191 (D. Minn. 1997). Faculty handbook provisions that (1) give the complainant, not the accused, sole discretion to initiate a formal sexual harassment grievance process, and (2) provide separate procedures for the dismissal of tenured professors, were incorporated into a tenured professor's employment contract. Whether the college breached a professor's contract by failing to comply with the faculty handbook's dismissal procedures for tenured faculty is a factual issue to be determined by a jury.

Eldeeb v. University of Minnesota, 864 F. Supp. 905 (D. Minn. 1994), *aff'd,* 60 F.3d 423 (8th Cir. 1995). Although a tenure code is part of an employment contract between a university and an oral surgeon-professor, general policy statements such as "due process" and "academic freedom" in a tenure code and nondiscrimination brochure do not meet contractual requirements under Minnesota law because of the difficulty of determining whether a breach has occurred. A faculty handbook may become the basis of a contract if terms are specific and communicated to a professor.

MISSISSIPPI

Holland v. Kennedy, 548 So.2d 982 (Miss. 1989). "[T]he express terms of a contract of employment may be *supplemented* by provisions of a personnel manual. If the handbook or policy statement is intended to *supplant* or *modify* the express terms of the contract, however, such an intent must also be expressed." Because the express terms of a professor-administrator's contract were ambiguous, the professor could introduce evidence of an employer's past practices and oral representations, as well as the policy handbook, to support the claim that his appointment was for a definite term.

Robinson v. Board of Trustees of East Central Junior College, 477 So.2d 1352 (Miss. 1985). Because a professor's one-page contract specifically referred to policies, rules, and regulations of the board of trustees, the provisions of the faculty handbook became part of the professor's contract. Even without evidence of the formal adoption of a handbook, the board was nonetheless bound by provisions because of their "use and dissemination of the publications and the terms of the contract entered into by the parties."

MISSOURI

Daniels v. Board of Curators of Lincoln University, No. WD 57215, 2001 Mo. Ct. App. LEXIS 149 (January 30, 2001). A tenured professor also held a position as vice president of student affairs, which was governed by an employee handbook. Although the university had a policy that said employees were at will, it also had employee handbook provisions that guaranteed that staff would not be dismissed without good cause. The court found that the promise not to dismiss without cause gave the professor "a protected property interest in his continued

employment [as vice president], thus entitling professor to notice of the reasons for termination and an opportunity to be heard."

Krasney v. Curators of University of Missouri, 765 S.W.2d 646 (Mo. Ct. App. 1989). Neither prior appointments nor any provision of a university's manual created the right to reappointment under a temporary librarian's specific term contract.

Snowden v. Northwest Missouri State University, 624 S.W.2d 161 (Mo. App. 1981). A nontenured faculty member's claim that he was not given timely notice of nonrenewal was rejected on the grounds that the faculty handbook clearly identified the timing for notice for faculty members on regular contracts.

MONTANA

Ashtar v. Van De Wetering, 642 P.2d 149 (Mont. 1982). Eastern Montana College's codification, which was specified as the Rank and Tenure Committee's operating manual, "although by its nature a pseudo-extension of the contract," was not part of the contract. The court followed the rationale of *Gates v. Life of Montana Ins. Co.* 638 P.2d 1063 (Mont. 1982), which held that an employee handbook was not part of an employee's contract because it was not bargained for and no meeting of minds existed.

NEBRASKA

Brady v. Curators of University of Trustees of Nebraska State Colleges, 242 N.W.2d 616 (Neb. 1976). A college violated a tenured professor's contract rights by terminating his employment without notice and hearing as required by the faculty handbook. The professor's participation in grievance procedures under a collective bargaining agreement did not terminate his contractual rights to due process under the faculty handbook.

NEVADA

University of Nevada, Reno v. Stacey, 997 P.2d 812 (Nev. 2000). A professor claimed that he should have been granted tenure when he met the threshold rating requirements set out in a university's bylaws and administrative manual. The court found that the manual and bylaws were "incorporated by reference" into the professor's employment agreement with the university. However, the professor

was not guaranteed tenure because the manual and bylaws made clear "the discretionary nature of [University's] decision to grant tenure."

NEW HAMPSHIRE

Young v. Plymouth State College, 199 U.S. Dist. LEXIS 22745 (D.N.H. 1999). A professor brought a claim of breach of contract based on a college's failure to follow its handbook's provisions. The court noted that "an employer's handbook or policy statement may form an enforceable unilateral contract," but found that the disclaimer in this particular handbook "effectively prevented the formation of any enforceable contract provisions with respect to the College's complaint and termination procedures."

NEW JERSEY

Healy v. Fairleigh Dickinson University, 671 A.2d 182 (N.J. Super. Ct. App. Div.), *cert. denied*, 678 A.2d 713 (N.J.), *cert. denied*, 519 U.S. 1007 (1996). A professor's claim of de facto tenure after completion of fourteen continuous semesters was rejected as conflicting with "formal, established tenure procedure" delineated in the handbook.

Alicea v. New Brunswick Theological Seminary, 581 A.2d 900 (N.J. Super. Ct. App. Div. 1990). A seminary failed to provide a faculty member, who was denied tenure, with grievance procedures in accordance with the faculty manual. The seminary was "obliged by [its] established procedures to provide plaintiff with a forum for resolution of his claim."

NEW MEXICO

Handmaker v. Henney, et al., 992 P.2d 879 (N.M. 1999). A professor's claim relied in part on representations by the university to provide context for interpreting the contract. The court returned the case to the district court on grounds that it was prematurely appealed. In doing so, however, the court noted that the issue of contract interpretation was "best informed" by *Garcia v. Middle Rio Grande Conservancy Dist.*, 918 P.2d 7, 12-13 (N.M. 1996), which held that "an employment contract may be implied in fact from a term exhibited in writing in, for example, a personnel policy manual."

Hillis v. Meister, 483 P.2d 1314 (N.M. Ct. App. 1971). Although a professor's contract at Eastern New Mexico University made no reference to a handbook, the court found that the handbook "govern[ed] the relationship between the faculty members and the university's administration" and that the university's failure to follow reappointment procedures set forth in the handbook was a breach of contract.

NEW YORK

Sackman v. Alfred University, 717 N.Y.S.2d 461 (Sup. Ct. 2000). A university's failure to follow a handbook's tenure procedures and policies entitled the professor to a new tenure review, but the professor's claim that the university breached his contract when it failed to grant tenure was denied.

Maas v. Cornell University, 721 N.E.2d 966 (N.Y. 1999). A handbook was not part of an employment contract where a university did not express an intent to have the handbook become part of the contract, the handbook was heavily informational in nature, and the handbook clearly stated that it could be altered at any time.

Holm v. Ithaca College, 669 N.Y.S.2d 483 (Sup. Ct. 1998). "Handbook rules, if duly authorized, are contractual in nature and, so far as applicable, bind both the college and the plaintiff." Therefore, a tenured faculty member waived contractual rights to peer review and grievance procedures by not filing under procedures in two different handbooks in effect during his employment.

Pearce v. Clinton Community College, 667 N.Y.S.2d 781 (App. Div. 1998). Employment-at-will principles remain in place when a faculty manual does not limit the administration's power of dismissal through specified termination procedures.

Roufaiel v. Ithaca College, 660 N.Y.S.2d 595 (App. Div. 1997). A professor at a private college stated a breach-of-contract claim based on the provost's memorandum stating that the college would not apply a tenure density rule (a cap of no more than 75 percent tenure-eligible positions), since a memorandum could be construed as an express limitation on the college's discretion. However, no cause of action arose from the allegation that the college failed to follow certain rules governing the tenure review process because no express provision existed in the faculty handbook that such a failure limited the college's discretion in

granting tenure: "The right to bring breach of contract [claims is] recognized where there are express limitations on college's discretion in tenure review process."

De Simone v. Siena College, 663 N.Y.S.2d 701 (App. Div. 1997). A college's decision not to renew a professor's contract was permissible because nothing in the faculty handbook or the professor's employment contract mandated renewal or substantively limited the college's discretion not to renew. The college did not breach the professor's employment contract when (1) it failed to provide him with written evaluations of his teaching ability, as called for in the faculty handbook, because the professor was terminated for failure to get along with colleagues, rather than for any teaching deficiency; and (2) it was allegedly two days late in sending the professor notice of its intent not to renew his contract because this error was *de minimis*.

Klinge v. Ithaca College, 663 N.Y.S.2d 735 (App. Div. 1997). A faculty handbook's immediate dismissal provision, which provided that no letter of warning was required in certain cases involving "a flagrant and egregious abuse of position," governed the employment termination of a tenured professor accused of plagiarism.

Bennett v. Wells College, 641 N.Y.S.2d 929 (App. Div. 1996). A private college was directed to conduct a *de novo* tenure review because of its failure to follow faculty handbook rules in denying tenure to a professor. The college's review lacked the active involvement of the college president, no direct communication existed between the administration and faculty in the tenure decision, and the dean's negative tenure recommendation was based on declining student enrollment, which was not a criterion enumerated in the faculty handbook.

Polakoff v. St. Lawrence University, No. 95-CV-1660, 1996 WL 481552 (N.D.N.Y. Aug. 19, 1996). A professor successfully stated a breach-of-contract claim, based on a faculty handbook provision that "[t]his policy of equal employment opportunity... governs all University employment policies, practices and actions," because the university used improper criteria and procedures to deny her tenure for discriminatory reasons. Under New York law, a handbook may give rise to contractual duties if "there exists an 'express limitation' on employer's rights."

NORTH CAROLINA

Claggett v. Wake Forest University, 486 S.E.2d 443 (N.C. Ct. App. 1997). Assuming a professor's allegation that a university's policies, procedures, and guidelines were part of his employment contract, the university did not breach its contract with the professor in rejecting the professor's tenure application. "The mere allegation that defendant failed to grant the plaintiff tenure is insufficient to allege any breach by defendant of the terms of plaintiff's employment contract."

Black v. Western Carolina University, 426 S.E.2d 733 (N.C. Ct. App. 1993). North Carolina provides that handbooks or policies do not become part of employment contracts unless expressly included in a contract; therefore, because university code provisions regulating fixed-term appointments were not incorporated expressly either into a professor's employment contract or handbook, the professor was not entitled to notice of nonreappointment beyond the expiration date in the original contract.

NORTH DAKOTA

Long v. Samson, 568 N.W.2d 602 (N.D. 1997). A faculty member's lawsuit alleging contractual and tort claims arising from the University of North Dakota's tenure review process was dismissed because his employment contract was governed by the Procedural Regulations set forth in the faculty handbook, and he had not pursued the administrative remedies required therein.

Thompson v. Peterson, 546 N.W.2d 856 (1996). A faculty member's employment agreement "was specifically governed by the NDSU [North Dakota State University] University Senate Policy Implementing Procedural Regulations and by the State Board regulations" (citing *Hom*).

Hom v. State, 459 N.W.2d 823 (N.D. 1990). Regulations, including those governing employment termination, adopted by the state board of higher education as part of the policy manual are part of a contract between the institution and faculty member.

Stensrud v. Mayville State College, 368 N.W.2d 519 (N.D. 1985). A professor sued a college for its failure to follow precisely the handbook provisions for termination. The professor received "reasonable notice" of her employment termination and this notice in no way compromised her procedural

rights. "[S]ubstantial compliance with the procedural requirements for termination is sufficient if their purpose is fulfilled."

OHIO

Chan v. Miami University, 652 N.E.2d 644 (Ohio 1995). A university violated a professor's due process rights and breached the tenured professor's employment contract, which incorporated by reference the university's faculty manual, in terminating the professor's employment under a rule prohibiting sexual harassment, rather than under the rule and procedure providing for termination of tenured faculty.

Brahim v. Ohio College of Podiatric Medicine, 651 N.E.2d 30 (Ohio Ct. App. 1994), *cert. denied,* 648 N.E.2d 515 (Ohio 1995). A college's dismissal of a professor did not breach the professor's employment contract—the faculty handbook was incorporated by reference into the professor's appointment letter—because evidence indicated that the college followed the handbook's grievance procedures, and sufficient cause existed to terminate the professor's contract.

Yackshaw v. John Carroll University Board of Trustees, 624 N.E.2d 225 (Ohio Ct. App. 1993). A professor dismissed by a private university was not entitled to the court's *de novo* review, but merely to the determination of whether the university breached the professor's contract and whether substantial evidence existed in the administrative record to support termination. The private university properly terminated the tenured professor's employment contract, which incorporated by reference the faculty handbook, after an investigation and internal hearings, which complied with the handbook, found the professor unfit because of "moral turpitude."

OKLAHOMA

Bunger v. University of Oklahoma Board of Regents, 95 F.3d 987 (10th Cir. 1996). A university did not violate a professor's procedural due process rights because nontenured faculty members at public institutions do not possess a constitutionally protected property interest in reappointment beyond specified contract period; nor do procedural protections in a faculty handbook create a property interest in reappointment.

Skimbo v. Eastern Oklahoma State College, 1996 WL 822817 (Okla. Ct. App. Aug. 20, 1996). A state university breached its contract with a tenured professor when it eliminated the professor's department because of apparent financial problems and effectively terminated his employment by offering him an adjunct position instead of laterally transferring him to "substantially similar status" in the area for which he was qualified to teach and could receive a salary commensurate with an approved schedule for full-time tenured faculty. A full-time position could have been created by combining adjunct and nontenured faculty positions. While the faculty handbook, which was specifically incorporated by reference into the professor's employment contract, allowed nonrenewal of employment contracts when a department was eliminated, the handbook also granted preferential status to tenured faculty in decisions of contract nonrenewal.

Jones v. University of Central Oklahoma, 910 P.2d 987 (Okla. 1995). "[W]here a written formal tenure policy exists, and the court finds that that policy constitutes an express contract, a university professor cannot have a legitimate claim to tenure pursuant to an informal, unwritten tenure policy" based solely on length of service.

Beck v. Phillips Colleges, Inc., 883 P.2d 1283 (Okla. Ct. App. 1994). A terminated president of a junior college introduced the college "policy manual" as part of written evidence of an implied contract of employment. While the court noted that "employer handbooks and policy manuals" are one of many factors critical to determining whether an implied contract of job security exists, the court found that the written instruments submitted were "simply too vague to constitute an implied contract."

OREGON

Conway v. Pacific University, 924 P.2d 818 (Or. 1996). Notwithstanding a dean's assurances to a former visiting professor at a university that poor student evaluations would not affect his tenure prospects, the university's nonrenewal of the professor's annual contract, based, in part, on poor student evaluations, failed to give rise to a negligent misrepresentation claim—even though the university handbook required the university to provide information to employees

concerning career advancement and job performance—because the contract did not create a "special" relationship required to establish such a claim.

Machunze v. Chemeketa Community College, 810 P.2d 406 (Or. Ct. App.), *cert. denied*, 815 P.2d 406 (Or. 1991). A college handbook and the faculty member's individual contract did not support a community college employee's claim that her appointment was conditioned solely on satisfactory evaluations and, therefore, no implied agreement existed to renew her contract.

PENNSYLVANIA

Pourki v. Drexel University, No. 98-4231, 1999 U.S. Dist. LEXIS 4519 (E.D. Pa. Mar. 24, 1999). "Under Pennsylvania law, employment relationships are presumed to be at-will. An employee can overcome this presumption by presenting evidence of a contract with specific and definite terms regarding length of employment or cause of termination." A university's faculty handbook gave the president and board of trustees final authority to override the faculty's tenure recommendations, so the faculty handbook did not override presumption of at-will employment.

Gulezian v. Drexel University, NO. 98-3004, 1999 U.S. Dist. LEXIS 3276, (E.D. Pa. Mar. 19, 1999), *reh'g denied*, No. 98-3004, 1999 U.S. LEXIS 4624, (E.D. Pa. Apr. 8, 1999). "An employer's handbook does not create contractual rights absent a clear representation that it is to have such an effect." Therefore, regarding a breach-of-contract claim for failure to grant tenure (which was dismissed on other grounds), the court stated, "It appears from the pertinent language in the Handbook that defendant [University] merely articulated in generalized terms the factors considered when making decisions, that there was a tenure quota, that tenure was discretionary and that no professor was assured of obtaining tenure."

Gronowicz v. Pennsylvania State University, No. 97-656, 1997 WL 799438 (E.D. Pa. Dec. 29, 1997), *aff'd*, 168 F.3d 478 (3rd Cir. 1998). A professor, who was required to sign a "Memorandum of Personal Service" stating that he was "entitled to benefits of, and agree[d] to abide by, regulations" of the university, failed to state a breach-of-contract claim when the university denied him tenure and terminated his employment because the memorandum, along with other university policies concerning tenure, failed to form an express employment

contract. To overcome the presumption of at-will employment in Pennsylvania, a professor must demonstrate "(1) sufficient additional consideration; (2) an agreement for a definite duration; (3) an agreement specifying that employee will be discharged only for just cause; or (4) an applicable recognized public policy exception."

Block v. Temple University, 939 F. Supp. 387 (E.D. Pa. 1996). A professor claimed that a university breached its contract, created by the faculty handbook and collective bargaining agreement, when the professor allegedly withdrew his tenure application based on the institution's promise that he would later receive "fresh and fair" tenure review. The matter must be resolved under the grievance procedure of a collective bargaining agreement because the professor's employment agreement provided for tenure review under the handbook and collective bargaining agreement.

Miller v. Trustees of University of Pennsylvania, 1993 U.S. Dist. LEXIS 13141 (E.D. Pa. Aug. 2, 1993). A professor alleged he was wrongly denied tenure even though he fulfilled the standard of "intellectual leadership" that was listed in the faculty handbook as the chief criterion for attaining tenure. "Under Pennsylvania law, policies in employee handbooks can be binding on an employer." However, the court found that the policies were "'aspirational' statements lack[ing] the clarity and specificity that Pennsylvania courts require to overcome the presumption of at-will employment. Further, where provisions in an employee handbook give the employer the exclusive authority to evaluate an employee's performance, they ... cannot defeat the at-will presumption of employment."

RHODE ISLAND

Dunfey v. Roger Williams University, 824 F. Supp. 18 (D. Mass. 1993). Under Rhode Island law, a university handbook that can be amended unilaterally by an institution at any time does not create contractual rights.

TENNESSEE

Langland v. Vanderbilt University, 589 F. Supp. 995 (D. Tenn. 1984), *aff'd mem.*, 772 F.2d 907 (6th Cir. 1985). The parties stipulated that tenure provisions in a faculty manual were part of a faculty member's individual contract, and the

court ruled that the plain language of the manual supported the conclusion that the dean evaluated the faculty member's scholarship under the appropriate standard in the faculty handbook.

TEXAS

Curtis v. University of Houston, 940 F. Supp. 1070 (S.D. Tex. 1996), *aff'd mem.*, 127 F.3d 35 (5th Cir. 1997). A public university claimed that it denied promotion to a tenured associate professor based on "his lack of a published research monograph, his lack of national visibility, and his hiatus from a productive output of academic materials"; the university's faculty handbook did not give the professor future expectation of property interest in promotion to full professor, but merely property interest in status as a tenured associate professor.

Owens v. Board of Regents of Texas Southern University, 953 F. Supp. 781 (S.D. Tex. 1996). A professor at a state university was denied tenure and sued, contending (1) procedural due process violations; (2) acquisition of *de facto* tenure pursuant to an unwritten policy in effect when she was initially hired; and (3) that later, a revised faculty manual, in effect at time she was denied tenure and explicitly stating that tenure was granted only upon affirmative action by the board of regents, did not govern her tenure denial because the university violated timely notice provisions in the faculty manual regarding tenure application and denial. The court ruled that it was premature to determine which version of the handbook governed the professor's tenure, and whether she was entitled to *de facto* tenure under an earlier faculty manual.

Spuler v. Pickar, 958 F.2d 103 (5th Cir.), *reh'g denied*, 1992 U.S. App. LEXIS 11286 (5th Cir. May 15, 1992). An assistant professor sued a public university, alleging that he was denied due process in being refused tenure and having his employment terminated. Texas law provides that faculty handbooks, standing alone, "constitute no more than guidelines absent express reciprocal agreements addressing discharge protocols and, therefore, professor enjoyed no property interest in continued employment or an assurance of tenure."

UTAH

Cherry v. Utah State University, 966 P.2d 866 (Utah Ct. App. 1998). Under a university's code of policies and procedures, an assistant professor was entitled

to review by the Tenure Advisory Committee (TAC) regarding tenure candidacy, but not reappointment. Therefore, the professor could not appeal her termination of employment by the president to TAC. "[A]n educational institution may undertake a contractual obligation to observe particular termination formalities by adopting procedures or by promulgating rules and regulations governing the employment relationship."

VERMONT

Logan v. Bennington College Corp., 72 F.3d 1017 (2d Cir. 1995), *cert. denied*, 519 U.S. 822 (1996). A professor with "presumptive tenure"—a five-year contract that would be renewed unless there was substantial failure to perform, financial problems, or elimination of position by the college owing to policy changes—was properly dismissed by the college for "good cause" for violating an "interim" sexual harassment policy in the faculty handbook. While a jury could have reasonably interpreted the faculty handbook as an employment contract between the professor and college, the adoption of an interim sexual harassment policy failed to constitute breach of contract, even though it was not approved by the faculty as required by the faculty handbook, because the interim policy did not "substantially" change the college's harassment policy and, therefore, faculty consultation and approval were not required. Furthermore, alleged "procedural flaws" during the professor's appeal and hearing did not constitute breach because none contravened faculty handbook provisions.

Nzomo v. Vermont State Colleges, 138 Vt. 73 (Sup. Ct. 1980). An untenured professor at Castleton State College charged that he was improperly terminated. Although general rules for termination set forth for all Vermont State Colleges by the Vermont State Trustees were followed, rules in the faculty handbook of Castleton State College were not followed. The court held that the college improperly failed to follow handbook provisions and the procedures for termination were not modified by past conduct. The court found that the labor board was correct in rewarding only out-of-pocket expenses to the professor; reinstatement or back pay were not necessary because the decision to terminate the professor's appointment would have been made even if proper procedures had been followed.

VIRGINIA

Tuomala v. Regent University, 477 S.E.2d 501 (Va. 1996). Three professors signed "three-year continuing contracts" for "tenured faculty appointment[s]," the terms of which were defined in the faculty handbook, and the college later modified that handbook to provide that professors receiving appointments under continuing contracts were entitled to annual "new contract[s]," rather than renewal of existing contracts. In the end, the professors were entitled to three years of employment under initial contracts and, after the expiration of three-year contracts, they were entitled to one-year contracts only, under the revised and controlling faculty handbook.

Sabet v. Eastern Virginia Medical Authority, 775 F.2d 1266 (4th Cir. 1985). A professor believed that a university offered "permanent tenure" as per AAUP policy. This belief, based on the widespread adoption of AAUP policies and the fact that the university had always renewed contracts in the past, was not justified, the court ruled, when the faculty handbook stated that the university had no such tenure policy.

Siv v. Johnson, 748 F.2d 238 (4th Cir. 1984). Where standards for tenure in the faculty handbook were formally adopted by the board of visitors, which had sole authority to grant tenure, the standards were presumed by the court to be part of a nontenured professor's contract. Although the handbook stated that faculty recommendations for tenure should be followed barring some "compelling reason," the faculty member's constitutional due-process rights were not violated when the administration denied tenure in spite of faculty recommendations and did not state a compelling reason for doing so. The administration's decision was based on the perceived lack of scholarly potential, a constitutionally permissible factor.

WASHINGTON

Trimble v. Washington State University, 993 P.2d 259 (Wash. 2000). "When an employer promises in writing specific treatment in specific situations, those promises may become an enforceable component of the employment relationship, even in an employment at will situation." However, "[a]n employee manual in an employment at will situation only provides specific obligations if the language of the manual is specific." Therefore, a professor could not succeed

on his claim that tenured faculty should have given input on his tenure evaluation in writing when the handbook clearly made submission of written input an option, not an imperative.

WEST VIRGINIA

Graf v. West Virginia University, 429 S.E.2d 496 (W.Va. 1992). Neither state university medical school rules nor those of its affiliated corporation could prohibit a faculty member's moonlighting when the board of regents' policy bulletin permitted it and the employment contract specifically made the appointment subject to the policy bulletin and faculty handbook.

WISCONSIN

Macgillis v. Marquette University, 514 N.W.2d 421 (Wis. Ct. App. 1993) (Not recommended for publication). The express employment contract of a professor included an implied condition of good faith. Furthermore, the handbook could serve to "flesh out" the terms of contract (citing *Ferraro v. Koelsch*, 368 N.W. 2d 666, 668 (1985), which held that an employee handbook can convert an at-will relationship into one bound by contractual terms).

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